

## Michigan Governor Signs Open Meetings Act Amendment Allowing Electronic Public Meetings

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October 19, 2020

***This has been updated from its original version published on October 15<sup>th</sup> to reflect that the Governor signed Senate Bill 1108 and it took immediate effect on Friday, October 16<sup>th</sup>.***

Michigan Governor Gretchen Whitmer signed Senate Bill 1108 on Friday, October 16, 2020, which amends the Open Meetings Act (the "OMA") with immediate effect.

Senate Bill 1108 (now Public Act 228 of 2020) amends the OMA to allow public bodies to conduct electronic "virtual" meetings with remote participation for any reason through the end of 2020, and in 2021 under specific circumstances. Importantly, the amendments apply retroactively to March 18, 2020—which means that actions taken at electronic meetings held on or after March 18 will be considered valid if those meetings complied with the general requirements for electronic meetings prescribed by the act.

From March 18, 2020, through December 31, 2020, public bodies may conduct electronic meetings virtually for any reason. After December 31, 2020, public bodies may only meet remotely under certain statutorily prescribed circumstances. From January 1, 2021, to December 31, 2021, public bodies may only meet remotely under the following circumstances requiring accommodation of absent members due to:

- military duty;
- a medical condition; the OMA is amended to define a "medical condition" as an illness, injury, disability or other health-related condition;
- a statewide or local state of emergency or state of disaster declared pursuant to law or charter by the governor or a local official or local governing body (and meeting held in person would risk the personal health or safety of members of the public or the public body).

With respect to a "statewide or local state of emergency," the amendments provide that an electronic meeting may only be held (i) to permit the electronic attendance of a member of the public body who resides in the affected area, and (ii) to permit the electronic meeting of a public body that usually holds its meetings in the affected area. A county or municipality may declare a local state of emergency under the Emergency Management Act, Public Act 390 of 1976, if certain statutory requirements are met.

After December 31, 2021, only members of public bodies who are absent due to military duty may participate remotely in public meetings.

### *Electronic Meeting Requirements*

The amendments incorporate many of the requirements for electronic meetings and remote participation that were in the Governor's nullified executive orders and also impose new requirements, which apply to electronic meetings held after the effective date of the amendments.

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- Electronic meetings must be "conducted in a manner that permits 2-way communication so that members of the public body can hear and be heard by other members of the public body, and so that public participants can hear members of the public body and can be heard by members of the public body and other participants during a public comment period."
- Public bodies must post notice at least 18 hours in advance of a meeting held electronically if the public body "directly or indirectly maintains an official internet presence." The advance notice must be posted on the public body's website on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled or electronic meetings that is fully accessible to the public, and must include, among other things:
  - A statement as to why the public body is meeting electronically;
  - How members of the public may participate in the electronic meeting;
  - If the public body has prepared an agenda for the meeting, the agenda must be made available to the public on the public body's website at least 2 hours before the electronic meeting begins.
- Further, the amendments impose a new requirement for any member of the public body participating remotely to publicly announce, at the outset of the meeting, that he or she is participating remotely. If the announcing member's remote participation is for any reason other than military duty, the member must announce his or her physical location "by stating the county, city, township, or village and state from which he or she is attending the meeting remotely." The member's public announcement must be included in the meeting minutes.

If you have any questions about the Michigan Open Meetings Act, please contact your Miller Canfield attorney or any of the authors listed on this e-alert.